

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FREDERICK JAMES FOXX,

Petitioner,

v.

STATE OF MISSOURI – COUNTY

PROSECUTOR,

Respondent.

No. 4:17-cv-1470-PLC

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. On May 8, 2017, petitioner Frederick James Foxx filed a petition in this Court pursuant to 28 U.S.C. § 2241. He sought and was granted leave to proceed in forma pauperis. In his petition, he stated he was challenging a 2014 sentence. However, he stated he was no longer in custody, and review of materials he attached as supplements to the petition revealed that the Missouri Board of Probation and Parole discharged petitioner from supervision in September of 2016. In an order dated November 16, 2017, the Court noted that petitioner was not “in custody” as required to seek relief pursuant to 28 U.S.C. § 2241, and directed petitioner to show cause why his petition should not be dismissed for lack of subject matter jurisdiction. In so doing, the Court specifically cautioned petitioner that his failure to timely respond would result in the dismissal of his petition.

Petitioner’s response was due to the Court on December 16, 2017. To date, he has neither responded to the Court’s order, nor sought additional time to do so. After careful consideration, the Court concludes that it lacks subject matter jurisdiction over the petition, and will summarily dismiss it.

The Court has considered whether to issue a certificate of appealability. To do so, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (*citing Flieger v. Delo*, 16 F.3d 878, 882–83 (8th Cir. 1994)). Because petitioner has made no such showing, the Court will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that petitioner's motion to appoint counsel (Docket No. 3) is **DENIED** as moot.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 27th day of December, 2017.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE